



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: HMO - 175472

PRELIMINARY RECITALS

Pursuant to a petition filed on July 7, 2016, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on August 18, 2016, by telephone.

The issue for determination is whether [REDACTED] correctly denied the Petitioner's request for coverage or orthodontia.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], DHS RN Consultant
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On an unspecified date, Petitioner's orthodontist requested authorization to treat the Petitioner. (Exhibit 3, attachment 2)

3. On June 10, 2016, [REDACTED] sent the Petitioner's parent a notice advising him that the request for services was denied. (Exhibit 1; Exhibit 3, attachment 2)
4. Petitioner has a Salzmann Index Score of 11. (Exhibit 3, attachments 4 and 5)
5. Petitioner has some difficulty chewing, so she needs to eat softer foods that are cut up. Petitioner is 5'6" tall and weighs 95 pounds. However, she has not experienced any weight loss or malnutrition. (Testimony of Petitioner's father)
6. Petitioner has not complained of pain in her mouth. (Testimony of Petitioner's father)

DISCUSSION

Under the discretion allowed by *Wis. Stat.*, §49.45(9), the Department of Health Services (DHS) requires MA (Medical Assistance) recipients to participate in HMOs. *Wis. Admin. Code*, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. *Wis. Admin. Code*, §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHS are the same as the general MA criteria. See *Wis. Admin. Code*, §DHS 104.05(3) which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. *Wis. Admin. Code*, § DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with DHS or appeal to the Division of Hearings and Appeals.

Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the DHS's denial within 45 days. *Wis. Stat.*, §49.45(5), *Wis. Admin. Code*, § DHS 104.01(5)(a)3.

When determining whether to approve any service, the HMO, as with the Division of Health Care Access and Accountability (DHCAA), must consider the generic prior authorization review criteria listed at *Wis. Admin. Code*, §DHS §107.02(3)(e):

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m)

For any prior authorization request to be approved, the burden of proof falls upon Medicaid recipient to show that the requested service satisfies the generic prior authorization criteria listed above. Estate of Gonwa ex rel Gonwa v. Wisconsin Dept. of Health and Family Services, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152

The Division of Health Care Access and Accountability finds orthodontics to be medically necessary when:

1. There is a severe and handicapping malocclusion as determined by a minimum Salzmann Index Score of 30 or greater. See *MA Provider Handbook*, p. B5.2-070; see also *ForwardHealth's on-line provider handbook, topic #2909*. The Salzmann Index measures the misalignment of teeth.
2. There are extenuating circumstances where, even though the Salzmann Index Score is under 30, there is a severe handicapping malocclusion, i.e. the malocclusion prevents the person from eating or causes severe pain.
3. The request is for minor treatment (1-4 teeth) for limited or interceptive orthodontic treatment using fixed or removable appliances, i.e. using spacers in a younger child to prevent a malocclusion.
4. The request is the result of a personality or psychological condition and a referral is made by a mental health professional.

ForwardHealth's on-line provider handbook, topic #2909¹.

“Orthodontic treatment is *not* authorized for cosmetic reasons.” *Id.*

Petitioner’s father did not dispute the determination that Petitioner’s Salzmann Index score is 11. There is no documentation in the record, nor any assertion of any extenuating circumstances, such as pain or an inability to eat due to the overcrowding of some of Petitioner’s teeth that would indicate a *severe* handicapping malocclusion. Indeed while the Petitioner is quite thin for her height, there is no medical

¹ <https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx?ia=1&p=1&sa=15&s=2&c=530>

documentation showing that her difficulty chewing is causing the Petitioner to be malnourished. Further, it appears that Petitioner's request is for full orthodontia to correct a malocclusion, not a request for minor treatment to 1-4 teeth in order to prevent a more serious malocclusion. Finally, there is no referral from a mental health professional indicating the orthodontic work is medically necessary due to a personality or psychological condition. As such, the HMO's decision to deny authorization for orthodontic work must be upheld at this time.

Petitioner should note, however, that nothing prevents the petitioner's orthodontist from filing a new request for authorization, if the petitioner's teeth continue to shift or if evidence of extenuating circumstances is documented in the request.

CONCLUSIONS OF LAW

████████████████████ correctly denied the Petitioner's request for coverage or orthodontia.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of September, 2016
\s _____
Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 6, 2016.

Division of Health Care Access and Accountability